

JEFFREY G. PAUPORE, SBN 007769
STEVE A. YOUNG, SBN016838
Deputy County Attorney
YCAO@co.yavapai.az.us

Attorneys for STATE OF ARIZONA

SUPERIOR COURT
YAVAPAI COUNTY, ARIZONA

2011 APR 20 AM 10:45

JENNIFER L. HENS, CLERK

BY: BOBBI JO BALL

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF YAVAPAI

STATE OF ARIZONA,

Plaintiff,

vs.

STEVEN CARROLL DEMOCKER,

Defendant.

CAUSE NO. P1300CR201001325

**STATE'S RESPONSE TO
DEFENDANT'S MOTION TO
MODIFY RELEASE CONDITIONS:
OWN RECOGNIZANCE**

Assigned to Hon. Warren R. Darrow
Division PTB

The State of Arizona, by and through Sheila Sullivan Polk, Yavapai County Attorney, and her deputy undersigned, hereby submits its Response to Defendant's Motion to Modify Release Conditions: *Own Recognizance*. The State of Arizona opposes the defendant's motion to release the defendant on his own recognizance, or to reduce the amount of his bond, or to transfer him to another county jail facility, based upon the following memorandum of points and authorities.

MEMORANDUM

FACTS

Defendant fails to mention in his motion to modify release conditions that he had a detailed plan to flee the jurisdiction long before he was arrested for the murder of Carol Kennedy. The State has proof that Defendant was planning to flee as early as July 2, 2008.

1 The defendant ignores the August 2010 indictment charging him with felony charges, in
2 cause number V1300CR201080461 in connection with the anonymous e-mail. The bond for this
3 case was set at \$1,000,000.00. These alleged offenses were committed during jail visitations
4 between the defendant, his 16 year old daughter Charlotte DeMocker ("Charlotte") and her
5 guardian Renee Girard who was defendant's fiancé at the time. The defense attorneys leaped on the
6 anonymous e-mail and crafted their infamous third party culpability defense for Democker.
7 Democker was later discovered to be the author of the anonymous e-mail that ultimately forced his
8 entire defense team to withdrawal for alleged violations of the rules of professional ethics.

9
10 Another significant piece of evidence recently developed by the State is the source of the
11 previously unidentified DNA major profile found under the victim's fingernails. The DNA found
12 under Carol Kennedy's fingernails came from a previous autopsy preformed by the medical
13 examiner's office. At this point in time, all of defendant's defenses to the murder of Carol Kennedy
14 have been eliminated, and again the instant motion is silent on these facts.

15
16 In December 2010 the defendant was re-indicted on charges from the previous two cases
17 plus the additional felony charge of Fraud Schemes in connection with the Hartford Insurance
18 proceeds. The bond set at the return of the indictment is \$2,000,000.

19 The defendant did not challenge the Grand Juries finding of probable cause in the instant
20 case. The defendant's current motion is silent to the fact that he has accumulated 7 felonies since
21 incarcerated. These material facts do not stop defendant from seeking to modify release conditions.
22 This defendant has allegedly committed felonies while incarcerated, so how can one expect him to
23 follow the law if he is released from jail? The aforementioned felonies allegedly committed by the
24 defendant are inextricably intertwined with the murder of Carol Kennedy.
25
26

ARGUMENT

Defendant's Conditions of Release should not be modified.

Ariz. R. Crim P., Rule 7.4(b) provides that "[a]ny person remaining in custody may move for reexamination of the conditions of release whenever the person's case is transferred to a different court *or the motion alleges the existence of material facts not previously presented to the court.*" (emphasis added.) A "material fact" is defined as "a fact that is significant or essential to the issue or the matter at hand." *Black's Law Dictionary*, 484 (7th abridged ed. 2000).

Defendant does not claim the existence of a single material fact in support of his motion and the court's inquiry should end here. Albeit, the State will nevertheless present facts and law to this court why the defendant's motion to modify release conditions must be denied.

The terms and conditions of release should be such to *reasonably ensure a Defendant's appearance* and the safety of the public. *Rule 7.2(a), Ariz.R.Crim.P.* *Rule 7.2(a)* states:

"Any person charged with an offense bailable as a matter of right shall be released pending or during trial on the person's own recognizance, unless the court determines, in its discretion, **that such a release will not reasonably assure the person's appearance as required.**" (emphasis added)

The defendant is moving this court to modify release conditions from a \$2,000,000.00 bond all the way down to his "own recognizance". Own recognizance pursuant to *Rule 7.1(a), Ariz.R.Crim.P.* "means release without any condition of an undertaking relating to, or deposit of security". Not this court or any court in its right mind could grant defendant's request under the facts and circumstances of this case. The underlying question is what is a reasonable amount of security that will assure defendant's appearance as required?

1 In determining amount of bail, the Court should consider circumstances of each case,
2 including but not limited to: nature and gravity of offense charged; the character and reputation of
3 the accused; the accused previous criminal record, if any; measure of punishment which may be
4 inflicted; and ability of accused to give bail, which includes his own pecuniary condition as well
5 as possession of friends able and willing to give bail for him. See *Gusick v. Boies*, 72 Ariz. 233,
6 233 P.2d 446 (1951). This Court should take into account the following enumerated matters based
7 upon available information in determining the appropriate amount of bail.
8

9 **I. The Defendant presents a serious flight risk**

10 The defendant carefully started planning an escape from law enforcement the day Carol
11 Kennedy was murdered. In the early morning hours following the murder, the defendant was
12 interviewed by the Yavapai County Sheriff's detectives. At the conclusion of the interview mid-day
13 on July 3, 2008, the defendant returned to his home. Later that day he instructed his daughter
14 Charlotte to go to Wal-Mart and purchase a disposable phone. The State has the receipt for the
15 purchase of this phone along with statements from Charlotte that her father was planning on running
16 from authorities from the very beginning.
17

18 On July 3, 2008 the sheriff's office seized the defendant's passport. On July 11, 2008 the
19 defendant ordered a new passport. In the application, the defendant lied stating he "couldn't find the
20 original one." The defendant was seeking another passport 8 days after his was taken by law
21 enforcement. Reasonable inferences are that defendant was planning on fleeing the jurisdiction in
22 July 2008 and the little "white lie" on his passport application was to him an insignificant necessity
23 to accomplish his plan.
24

25 In April 2010, Renee Girard, now the defendant's ex- fiancé, informed the State that the
26 defendant had buried a "get away bag" near his Alpine Meadows residence sometime in mid August

1 of 2008. Later, the sheriff's office found the buried get away bag with a "go" phone, shoes and
2 clothing inside.

3 Also in August 28, 2008 the defendant ordered four special books from Amazon. The books
4 were titled: (1) "How to be Invisible"; (2) "International Fugitive"; (3) "How to Disappear without
5 Changing your Identity"; and (4) "Advanced Fugitive - How to Run, Hide and Survive". The
6 Defendant's intention to run from authorities was document by Charlotte who wrote in her journal
7 "my dad's considering running."
8

9 The intentions of the defendant to flee the jurisdiction are real and are supported by physical
10 evidence. Considering the strength of the State's case and the severity of the punishment, if this
11 defendant's bond is reduced, his appearance can not and will not be assured. To reduce
12 Defendant's bond to an amount below \$2,000,000.00 will result in a trial in absentia.
13

14 **II. The Defendant committed felony crimes while in custody**

15 On December 10, 2010 a Yavapai County Grand Jury found probable cause that defendant
16 STEVEN CARROLL DEMOCKER, committed the following crimes: (I) On or about July 2, 2008,
17 acting with premeditation, caused the death of Virginia Carol Kennedy, a class 1 felony; (II) On or
18 about July 2, 2008, with intent to commit a theft or a felony therein, entered or remained
19 unlawfully in or on the residential structure of Virginia Carol Kennedy, located at 7485 Bridal
20 Path, Prescott, AZ, while he was armed with a deadly weapon or a dangerous instrument, a class
21 2 dangerous felony; (III) On or between August 2008 through October 2009 knowingly obtained a
22 benefit from the Virginia Carol Kennedy Testamentary Trust dated June 23, 1998, by means of
23 fraudulent pretenses, representations, promises or material omissions, a class 2 felony; (IV) On or
24 between May 19, 2009 and September 18, 2010, pursuant to scheme or artifice to defraud created false
25 evidence (anonymous e-mail and voice in the vent stories) and he knowingly obtained a benefit from
26

Office of the Yavapai County Attorney

255 E. Gurley Street, Suite 300

Prescott, AZ 86301

Phone: (928) 771-3344 Facsimile: (928) 771-3110

1 Yavapai Superior Court, by means of fraudulent pretenses, representations, promises or material
2 omissions a, class 2 felony; (V) On or between June 1, 2009 and September 18, 2010, with intent
3 to promote or aid the commission of a Fraud schemes upon the Yavapai Superior Court, agreed with
4 Renee Girard and Charlotte DeMocker that at least one of them would engage in conduct
5 constituting that offense, and defendant prepared a fictitious statement and directed Charlotte
6 DeMocker to e-mail anonymously, the fictitious statement to Attorney John Sears to be used as
7 evidence in case number CR2008-1339, a class 2 felony; (VI) On or about June 2, 2009, with intent
8 to defraud, falsely made, completed or altered a written instrument, to-wit: Fictitious Anonymous e-
9 mail, a class 4 felony; (VII) On or between May 19, 2009 and July 13, 2009 with intent to defraud,
10 falsely made, completed or altered a fictitious voice in the vent statement, a class 4 felony; (VIII)
11 On or between May 19, 2009 and September 18, 2010, in a matter related to business conducted
12 upon the Yavapai Superior Court, pursuant to a scheme or artifice to defraud or deceive, made or
13 used writings or documents knowing they contained a false, fictitious or fraudulent statements to-
14 wit: May 19, 2009 voice in the vent and June 19, 2009 "Anonymous" e-mail, a class 5 felony; (IX)
15 On or between May 19, 2009 and September 18, 2010, with intent that it be used, introduced,
16 rejected or made unavailable in an official proceeding which was then pending knowingly made,
17 produced or offered any false physical evidence, a class 6 felony; and (X) On or between June 1,
18 2009 and June 20, 2009, caused, encouraged or contributed to or was responsible for the delinquency
19 of Charlotte DeMocker, a child, a class 1 misdemeanor. The defendant did not challenge the Grand
20 Jury finding of probable cause in this case.

21
22 The physical evidence to prove all of the above mentioned crimes is backed by a Grand
23 Jury's determination of probable cause that defendant is guilty as charged. If defendant's bond is
24 modified to allow his release from custody, his appearance at trial will not be assured.
25
26

1 **III. The Courts have very limited power to interfere with the Sheriff's operation of the**
2 **jail**

3 It is well established in Arizona that it is the county sheriff that is empowered to manage the
4 county jail. In *Arpaio v. Baca*, 217 Ariz. 570, 177 P.3d 312, (2008) the court stated:

5 The power to "[t]ake charge of and keep the county jail ... and the prisoners in the county
6 jail" belongs to the sheriff. A.R.S. § 11-441(A)(5); A.R.S. § 31-101 (2002) ("The common jails in
7 the several counties ... shall be kept by the sheriffs of the counties in which they are respectively
8 located."). The broad grant of power to county sheriffs to manage jail facilities necessarily
9 includes the authority to regulate jail visitation schedules. As we observed in *Judd v. Bollman*,
10 166 Ariz. 417, 418, 803 P.2d 138, 140 (App.1991) (holding that justice of the peace's order
11 designating the county jail at which a prisoner would serve his sentence violated the separation of
12 powers doctrine):

13 [A]bsent any constitutional violations with regard to prisoners, the
14 judiciary has no authority to usurp the functions of the executive
15 branch. Courts have limited authority to interfere with a sheriff's
16 duties to maintain and operate the county jails pursuant to the
17 Arizona Constitution and A.R.S. §§ 11-441(5) and 31-101, and
18 then only to determine whether specific constitutional violations
19 exist and in doing so to order narrow remedies to correct these
20 violations.

21 The defendant's request to be transferred to the Coconino county jail is simply another
22 attempt at manipulating the legal system. The defendant does not dictate to the sheriff's office where
23 he should be held.

24 The law in Arizona does not give the court authority to order the Yavapai County Sheriff on
25 how the jail should be run, let alone order the Sheriff to relocate defendant to another county jail.
26

1 **IV. The victim's mother and brother oppose defendant's request**

2 Ruth K. and John K. strongly oppose any modification in defendant's bond. Both victims
3 believe the defendant would flee at the first opportunity. The victim's are also afraid if defendant is
4 released, he would manipulate family and or friends in helping him to flee.

5 It is Ruth's belief that it is the defendant's actions that have prevented justice from being
6 served in the murder of her daughter. Ruth, at age 86, has waited almost three years to see justice for
7 her daughter and she believes the defendant should remain in the Yavapai county jail until this case
8 is concluded.

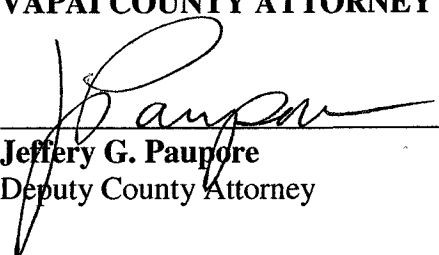
9
10 **CONCLUSION**

11 The State vehemently opposes any modification of the defendant's conditions of release. The
12 defendant has manipulated the legal system to his advantage without any regard for the law or for the
13 victims. The defendant has continued to break the law even while he is incarcerated. The defendant
14 by his wanton disregard for the law has shown that he cannot be a law abiding citizen and there
15 should be no expectation that the defendant would follow the orders of the court.

16 The State maintains the cash bond of \$2,000,000.00 is *reasonable to ensure Defendant's*
17 *appearance* and for the safety of the public.

18
19 **RESPECTFULLY SUBMITTED** this 20th day of April, 2011.

20
21 **Sheila Sullivan Polk**
22 **YAVAPAI COUNTY ATTORNEY**

23 By: 
24 **Jeffery G. Paupore**
25 **Deputy County Attorney**
26

Office of the Yavapai County Attorney

255 E. Gurley Street, Suite 300

Prescott, AZ 86301

Phone: (928) 771-3344 Facsimile: (928) 771-3110

COPY of the foregoing **delivered** this
20th day of April, 2011, to:

Honorable Warren R. Darrow
Division PTB
Yavapai County Superior Court

Craig Williams
Attorney for the defendant
Yavapai Law
3681 N. Robert Rd
Prescott Valley, AZ 86314
yavapailaw@hotmail.com

COPY of the foregoing **sent via U.S. Mail** this
20th day of April, 2011, to:

Greg Parzych
222 No. Central Ave.
Phoenix, AZ 85004
Co-counsel for the defendant
gparzlaw@aol.com

Daniela De La Torre
DE LA TORRE LAW OFFICE, PLC
245 West Roosevelt, Suite A
Phoenix, AZ 85003
Attorney for victim
Charlotte DeMocker
ddelatorre@azbar.org

Melody G. Harmon
210 S. 4th Ave. Suite 220
Phoenix, AZ 85003
Attorney for victim
Katie DeMocker
criminaldefensephx.com

By: Fullette Helm